

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

M. KURBEGOVICH, No. C-09-2203 TEH (PR)
Plaintiff,
v. ORDER OF TRANSFER
UNKNOWN FBI AGENTS,
Defendant(s).

Plaintiff, a prisoner at California State Prison, Corcoran in Corcoran, California, and frequent litigant in federal court, has filed a pro se civil rights complaint under 42 U.S.C. section 1983 alleging that all of his prison mail addressed to attorneys, professors and journalists has been confiscated or destroyed by "unknown FBI agents" due to the implementation of the 'Patriot Act.'" Doc. #1 at 1, 5. Plaintiff also seeks to proceed in forma pauperis under 28 U.S.C. section 1915. Doc. #2.

A substantial part of the events or omissions giving rise to the claim(s) occurred in Kings County, which lies within the venue of the Eastern District of California. See 28 U.S.C. § 84(b).

1 Venue therefore properly lies in the Eastern District. See id. §
2 1391(b).

3 Accordingly, in the interest of justice and pursuant to 28
4 U.S.C. section 1406(a) IT IS ORDERED that this action be TRANSFERRED
5 to the United States District Court for the Eastern District of
6 California.

7 Should Plaintiff choose to refile this action in the
8 Eastern District of California and seek leave to proceed in forma
9 pauperis under 28 U.S.C. section 1915, he is reminded that The
10 Prison Litigation Reform Act of 1995 ("PLRA"), which was enacted,
11 and became effective, on April 26, 1996, provides that a prisoner
12 may not bring a civil action or appeal a civil judgment under 28
13 U.S.C. section 1915 "if the prisoner has, on 3 or more prior
14 occasions, while incarcerated or detained in any facility, brought
15 an action or appeal in a court of the United States that was
16 dismissed on the grounds that it is frivolous, malicious, or fails
17 to state a claim upon which relief may be granted, unless the
18 prisoner is under imminent danger of serious physical injury." 28
19 U.S.C. § 1915(g). "Section 1915(g)'s cap on prior dismissed claims
20 applies to claims dismissed both before and after the [PLRA's]
21 effective date." Tierney v. Kupers, 128 F.3d 1310, 1312 (9th Cir.
22 1997).

23 Plaintiff has had three or more prior prisoner actions
24 dismissed by this Court alone on the grounds that they are
25 frivolous, malicious, or fail to state a claim upon which relief may
26 be granted. See, e.g., Kurbegovich v. Webster, No. C 90-2075 TEH
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1 (N.D. Cal. Nov. 21, 1990) (Order of Dismissal with prejudice);
 2 Kurbegovich v. Marshall, No. C 91-0038 TEH (N.D. Cal. Apr. 10, 1991)
 3 (Order granting Defendant's Motion to Dismiss); Kurbegovich v.
 4 Reagan, No. C 91-1166 TEH (N.D. Cal. June 24, 1991) (Order
 5 dismissing Complaint); Kurbegovich v. Marshall, No. C 91-3625 TEH
 6 (N.D. Cal. Feb. 26, 1991) (Order of Dismissal with prejudice);
 7 Kurbegovich v. Marshall, No. C 91-3822 TEH (N.D. Cal. Nov. 26, 1991)
 8 (same); Kurbegovich v. Marshall, No. C 93-4189 TEH (N.D. Cal. Dec.
 9 6, 1993) (Order denying Plaintiff's request to proceed in forma
 10 pauperis and dismissing Complaint); Kurbegovich v. Marshall, No. C
 11 94-0487 TEH (N.D. Cal. June 29, 1994) (same); Kurbegovich v. FBI
 12 Deputy Director, et. al., No. C 04-2887 TEH (N.D. Cal. Nov. 1, 2004)
 13 (Order of Dismissal); Kurbegovich v. FBI Deputy Director, et. al.,
 14 No. C 04-3155 TEH (N.D. Cal. Dec. 9, 2004) (Order of Dismissal with
 15 prejudice); see also Kurbegovich v. United States Secret Service,
 16 No. 04-CV-3847 RSWL-CW (C.D. Cal. Aug. 9, 2004); Kurbegovich v.
 17 Deputy Director, No. 04-CV-5662 UA-CW (C.D. Cal. Aug. 4, 2004)
 18 (order denying leave to proceed in forma pauperis on grounds of
 19 frivolousness).

20 Plaintiff therefore is advised that, should he choose to
 21 refile this case in the Eastern District where venue is proper, he
 22 may proceed in forma pauperis under 28 U.S.C. section 1915 only if
 23 he is seeking relief from a danger of serious physical injury which
 24 is "imminent" at the time of filing. See Abdul-Akbar v. McKelvie,
 25 239 F.3d 307, 312 (3d Cir. 2001) (en banc); Medberry v. Butler, 185
 26 F.3d 1189, 1192-93 (11th Cir. 1999); Ashley v. Dilworth, 147 F.3d
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1 715, 717 (8th Cir. 1998); Banos v. O'Guin, 144 F.3d 883, 885 (5th
2 Cir. 1998).

3 The clerk shall transfer this matter and terminate all
4 pending motions as moot.

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7 IT IS SO ORDERED.

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DATED

05/27/09



11 THELTON E. HENDERSON
12 United States District Judge

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